

REMARKS

The claims have been amended to more clearly define the invention as disclosed in the written description. In particular, claim 7 has been cancelled, while claim 1 has been amended to include the limitations of cancelled claim 7. In addition, the claims have been amended for clarity.

The Examiner has rejected claims 1-12 under 35 U.S.C. 101 in that the claimed invention is directed to non-statutory subject matter.

Applicants believe that the Examiner is mistaken. Firstly, while the "system" may be configured in software, then if all the steps were program instructions, then they would describe "functionally descriptive material". However, it should be noted that the claims include structure, i.e., "user interface" for enabling a user to enter instructions. As such, these claims cannot be considered merely a computer program, and as such are indeed statutory.

The Examiner has rejected claims 1-7, 12-15 and 20 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0229537 to Dunning et al. The Examiner has further rejected claims 8-10 and 16-18 under 35 U.S.C. 103(a) as being unpatentable over Dunning et al. in view of U.S. Patent 5,616,876 to Cluts. In addition, the Examiner has rejected claims 11 and 19 under 35 U.S.C. 103(a) as being unpatentable over Dunning et al. in view of the article "PATs: Realization and User Evaluation of an Automatic Playlist Generator" by Pauws et al.

Dunning et al discloses a system, method, and computer program product to discover relationships among items and recommend items based on the discovered relationships. The recommendations provided are based on user profiles that take into account actual preferences of users, without requiring users to complete questionnaires. A binomial log likelihood ratio analysis technique is applied, to reduce adverse effects of overstatement of coincidence and predominance of best sellers. The system may be used, for example, to generate track lists for a personalized radio station (see abstract).

As explained with reference to Figs. 5 and 6 and paragraph [0150], the method according to Dunning et al. identifies tracks that are related to a particular track. Artists for the related tracks are identified and stored in a related artists database.

As explained in paragraph [0213], when the user makes a query, related tracks, albums or artists are provided.

As noted in MPEP §2131, it is well-founded that "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Further, "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of

terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Applicants submit that Dunning et al. fails to disclose or suggest "a user interface that presents the artist list to the user and facilitates the approval or modification of the artist list by a user", "an artist selector, operably coupled to the artist similarity module, that is configured to iteratively select a selected artist from the artist list upon initiation by the user of the generation of the playlist" and "an item selector, operably coupled to the artist selector, that is configured to: select a selected item associated with the selected artist from a source of items".

The Cluts patent discloses a system and methods for selecting music on the basis of subjective content, in which the user selects a seed song. The system identifies other artists who have the same style as the seed song artist. After the matching artists are identified, the system compiles a list of the songs performed by those artists.

Applicants therefore submit that Cluts fails to supply that which is missing from Dunning et al., i.e., "a user interface that presents the artist list to the user and facilitates the approval or modification of the artist list by a user", "an artist selector, operably coupled to the artist similarity module, that is configured to iteratively select a selected artist from the artist list upon initiation by the user of the generation of the playlist"

and "an item selector, operably coupled to the artist selector, that is configured to: select a selected item associated with the selected artist from a source of items".

The Pauws et al. article discloses a playlist generator in which, arguably, songs are clustered based on a similarity measure that selectively weighs attribute values of songs. However, Applicants submit that Pauws et al. does not supply that which is missing from Dunning et al., i.e., "a user interface that presents the artist list to the user and facilitates the approval or modification of the artist list by a user", "an artist selector, operably coupled to the artist similarity module, that is configured to iteratively select a selected artist from the artist list upon initiation by the user of the generation of the playlist" and "an item selector, operably coupled to the artist selector, that is configured to: select a selected item associated with the selected artist from a source of items".

In view of the above, Applicants believe that the subject invention, as claimed, is neither anticipated nor rendered obvious by the prior art, either individually or collectively, and as such, is patentable thereover.

Applicants believe that this application, containing claims 1-6 and 8-20, is now in condition for allowance and such action is respectfully requested.

Respectfully submitted,

by /Edward W. Goodman/
Edward W. Goodman, Reg. 28,613
Attorney
Tel.: 914-333-9611